

REMARKS

Claims 1-20 are currently pending the present applications. Claims 1, 3-5, 12, 13, and 17-20 are amended. No new matter is presented. In view of the above amendments and the following remarks, Applicant requests the favorable consideration and allowance of claims 1-20.

The Office Action also indicates that claims 1-20 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 8-23 of co-pending patent application No. 11/097,340. Applicant respectfully requests that this rejection be held in abeyance until the end of prosecution.

CLAIMS REJECTIONS UNDER 35 USC §112

Claims 3-5, 12, 13, and 18-20 are rejected under 35 U.S.C. 112, second paragraph as being indefinite. Claims 3, 12, 18, 19, and 20 are amended to more clearly recite the features of the claimed invention. Therefore, Applicant requests the withdrawal of the rejection of claims 3-5, 12, 13, and 18-20.

CLAIM REJECTIONS UNDER 35 USC §102

Claims 1-20 under 35 U.S.C. § 102(b) are rejected as being anticipated by Paul (U.S. Patent 7,255,699). The Examiner takes the position that Paul teaches or suggests all the features recited in claims 1-20. Applicant respectfully disagrees.

Paul discloses a spine plate assembly having a retaining band that is mounted to a spinal plate and activates a blocking feature of the spinal plate assembly to thereby

prevent the bone fastener from withdrawing out the spinal plate assembly and past the blocking member. The retaining element or elements are disposed in intermittently located channel elements in the plate.

It is respectfully submitted that Paul fails to teach or suggest all the features recited in independent claims 1, and 17 of the present application. Specifically, Paul fails to teach or suggest that the deformable interference point is a portion that is integral with the unitary body of the plate and conforms to the spherical curvature of the at least one opening, as recited in claims 1 and 17. In contrast, the retaining elements/bands 14 disclosed in Paul are separate from the plate itself. The present invention provides for a plate having a unitary body that incorporates the interference point as a single piece, whereas Paul discloses multiple elements including a flexing band. Neither the retainer nor the flexible bands of Paul are integral with the body of the plate. Furthermore, the retainer and the retaining bands are not an interference portion that conforms to the spherical curvature of opening in the place through which the screw head is inserted.

With regard to claim 9, it is respectfully submitted that Paul does not anticipate the claims. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegall Bros. Union Oil Co. of California*, 814 F.2d 628. Paul does not disclose a plate having an interference area that is integrally formed therein, as recited in claim 9. Such a feature shows insight that is contrary to the understanding and expectations of the art. Therefore, Applicant requests that the Examiner withdraw the rejection claim 9 under 35 U.S.C 102.

Claims 2-8, 10-16, and 18-20 are dependent upon independent claims 1, 9, and 17. It is submitted that these claims recite patentable subject matter for at least the reasons mentioned above. Therefore, Applicant requests the withdrawal of the rejection of claims 2-8, 10-16, and 18-20 under 35 U.S.C. 102(b).

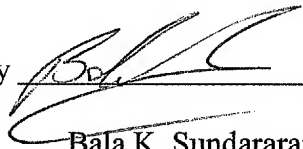
CONCLUSION

All claims are believed to be in condition for allowance. If the Examiner believes that the present amendments still do not resolve all of the issues regarding patentability of the pending claims, Applicants invite the Examiner to contact the undersigned attorney to discuss any remaining issues. If any additional fee is required for entry of the present amendments, please charge such fee to Globus Medical Deposit Account No. 50-4131.

Respectfully submitted,

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Globus Medical, Inc.
Customer Number: 68153
Telephone: (610) 415-9000
Facsimile: (610) 415-9144

By 
Bala K. Sundararajan
Registration No. 50,900